IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 113 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIRALAL JIVABHAI CHAVDA
Versus
DISTRICT PANCHAYAT & ANOTHER

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Appearance :
MS SEJAL K MANDAVIA for Appellant.
MS NAYANA V PANCHAL for Respondents.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/07/2007

ORAL JUDGMENT

By way of the present appeal, the original plaintiff

has challenged the judgment and decree passed by Second Joint District Judge, Junagadh in Regular Civil Appeal No. 25 of 1997 whereby the learned Judge has dismissed the appeal and thereby confirmed the order passed by the learned Civil Judge [S.D]. Junagadh in Regular Civil Suit No. 643 of 1992.

Short facts of the case are that the present plaintiff was working as Deputy Accountant in the District Panchayat, Junagadh and at the relevant time was working as Deputy Accountant in the office of Taluka Development Officer, Veraval. The plaintiff was served with a charge sheet. The plaintiff filed a reply. Subsequently a departmental inquiry was initiated against the plaintiff. Ultimately, an order dated 07.11.92 was passed reducing his pay and placing him in the minimum pay in the grade of 1400-2600 etc. The said order was challenged by filing Regular Civil Suit No. 643 of 1992 before the learned Civil Judge [S.D]. Junagadh praying for a declaration that the impugned order of reducing the plaintiff's present pay to the minimum pay passed by the District Development Junagadh is void and not binding to the plaintiff. The defendants filed an application Exh. 68 stating that the Civil Court has no jurisdiction to entertain the suit. The trial Court therefore dismissed the suit on 30.1.97. Feeling aggrieved, the appellant preferred Regular Civil Appeal and the appeal was also dismissed. The original plaintiff has therefore preferred the present Second Appeal.

Heard learned advocate Ms. Sejal Mandavia for the appellant and Ms. Nayna Panchal, learned advocate for the respondents.

Both the courts below came to a conclusion that when a special remedy is available against the penalty order, then impliedly jurisdiction of the Civil Court is barred.

Learned advocate Ms. Nayana V Panchal for the respondent submitted that the prayer in the present suit was for a declaration that the impugned order of reducing the plaintiff's present pay to the minimum pay is void and not binding to the plaintiff. She, therefore, submitted that the dispute is not based on general law of contract but is clearly a service dispute and therefore the suit is not maintainable.

In the case of RAJASTHAN S.T. CORPON. vs. KRISHNA KANT ETC. reported in 1995 (2) GLH 116 and C.T. NIKAM vs. MUNI. CORPN., AHMEDABAD reported in 1993 (1) GLR 684, under the Industrial Disputes Act, 1947, only the for a created under Industrial Disputes Act have jurisdiction to entertain dispute and the jurisdiction of the Civil Court is barred and the Civil Courts will have jurisdiction only when the reliefs are based on general law of contract. In paragraph 35 of the judgment in the case of RAJASTHAN S.T. CORPON. vs. KRISHNA KANT ETC. [supra] the Supreme Court has held as under:

> “35. We may now summarize the principles flowing from the above discussion:
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> (1). Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court

cannot be said to be not maintainable, even though such a dispute may also constitute an “industrial dispute” within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2). Where, however, the dispute involved recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3). Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 – which can be called 'sister enactments' to Industrial Disputes Act – and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2 (k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4). It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex facie frivolous, not meriting an adjudication.

(5). Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly – i.e. without the requirement of a reference by the government – in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6). The certified Standing Orders framed

> under and in accordance with the Industrial Employment (Standing Order) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees though they do not amount to "statutory" provisions. Any violation of the Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein.
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> (7). The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

In the instant case, as stated above. the prayer in the suit is for a declaration that the impugned order reducing the plaintiff's pay is void and not binding to the plaintiff. The said prayer cannot be said to be

arising from a dispute under the general contract, but is clearly a service dispute. Applying the above principals, it must, therefore, be held that the suit filed by plaintiff is not maintainable in law. In that view of the matter, no error is committed by the courts below. The appeal therefore, deserves to be dismissed.

In the result, the appeal is dismissed. No order as to costs.

[K.S. JHAVERI, J.]

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